

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED

02-28-08
04:59 PM

Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards Into Procurement Policies.

Rulemaking 06-04-009
(Filed April 13, 2006)

BEFORE THE CALIFORNIA ENERGY COMMISSION

AB 32 Implementation.

Docket 07-0IIP-01

**RESPONSE OF THE INDEPENDENT ENERGY PRODUCERS
ASSOCIATION TO THE PETITION OF SOUTHERN
CALIFORNIA EDISON COMPANY FOR MODIFICATION OF
DECISION 07-01-039**

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Date: February 28, 2008

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OF THE STATE OF CALIFORNIA**

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Pursuant to Rule 16.4(f) of the Commission's Rules of Practice and Procedure, the Independent Energy Producers Association (IEP) is pleased to respond to the Petition for Modification of Decision (D.) 07-01-039 of Southern California Edison Company (SCE) dated January 28, 2008.¹

In its Petition, SCE requests that the Commission modify D.07-01-039, the Emission Performance Standard (EPS) Decision, which limited the ability of load-serving

¹ By e-mail of February 20, 2008, Administrative Law Judge Amy Yip-Kikugawa confirmed that responses to SCE's petition are due on February 28, 2008.

entities (LSEs) to enter into long-term commitments with baseload facilities with high greenhouse gas (GHG) emissions. In that Decision, the Commission implemented Senate Bill (SB) 1368.² As enacted, SB 1368 intended to “prohibit any load serving entity . . . and any local publicly owned electric utility, from entering into a long-term financial commitment . . . unless any baseload generation . . . complies with a greenhouse gases emission performance standard.”³

SCE argues that because of its continued “legal obligations” regarding the Four Corners Generating Station, SCE’s share of expenditures for capital projects designed to extend the facility’s useful life do not fall under the category of “covered procurements” that are subject to the EPS, as set out by D.07-01-039.⁴ In seeking a modification of D.07-01-039, SCE is in effect asking the Commission to override SCE’s *legal obligation* to comply with SB 1368 in favor of SCE’s interpretation of its *contractual obligations*. As discussed more fully below, SCE’s request is unwarranted.

Essentially, SCE presents three arguments in support of its Petition:⁵

1. The EPS Decision failed to address SCE’s stated concern that the EPS Decision’s specific language could be applied in a manner that would impair SCE’s ability to fulfill the financial obligations it had assumed when it executed various agreements that made SCE a co-owner of units 4 and 5 of Four Corners Generating Station.
2. Application of the EPS to Four Corners would harm SCE.

² Stats. 2006, ch. 598.

³ SB 1368, preface, p. 2.

⁴ Petition, p. 1.

⁵ As the basis of its argument, SCE states: “As noted in the sections below, application of the EPS Decision to preclude SCE’s future investment in Four Corners will conflict with SCE’s contractual obligation to financially support Four Corners, contravenes the EPS Decision’s stated intention, and harm SCE and its ratepayers.” (Petition, p. 2.)

3. Application of the EPS to Four Corners would harm ratepayers.

In response, IEP urges the Commission to deny SCE's Petition for the following reasons:

- The Commission explicitly addressed SCE's concerns about additional investment in existing resources when it adopted D.07-01-039. Granting SCE's requested modifications would establish a damaging precedent as the Commission implements the state's GHG emission reduction strategy in coordination with the California Energy Commission (CEC) and the California Air Resources Board (CARB).
- SCE argues that application of the EPS to the Four Corners capital projects harms SCE separate from any potential harm to ratepayers. SCE provides no evidence for this in the Petition. Rather, the evidence presented in the Petition identifies only potential financial harm (i.e., potential cost liability). To the extent such harm occurs, this harm will affect ratepayers rather than SCE.
- SCE argues that application of the EPS harms its customers. However, SCE's argument fails to consider that application of the EPS in this case avoids significant GHG emission mitigation costs and potentially creates substantial benefits for ratepayers. The potential benefits to SCE's customers of avoiding these GHG emission mitigation costs are the underlying justification for applying the EPS to SCE's proposed investment in the Four Corners capital projects.

A more detailed explanation of IEP's points is provided in the following sections.

I. THE EPS DECISION ADDRESSED SCE'S CONCERNS

SCE argues that the EPS Decision failed to address SCE's stated concerns regarding its interest in the Four Corners Generating Station.⁶ In fact, in the EPS Decision the Commission expressly addressed SCE's stated concerns, as follows:

⁶ Petition, p. 2.

is intended to extend the life of one or more units of an existing baseload powerplant for five years or more. The Four Corners improvements that are behind SCE's request are exactly the types of investments or improvements addressed in the EPS Decision. SCE's proposed investment in the Four Corners Generating Station is designed to "help ensure that Four Corners retains some residual value **if** SCE ultimately divests its share of the power plant when the Agreements' current term expires in 2016."¹⁰ In other words, these investments are being made to extend the life of Four Corners beyond five years, *i.e.*, for use through 2016 by SCE and for use beyond 2016 by SCE or its successor.

Further evidence of the long-term nature of the investments may be found in SCE's Exhibit C. The investments are specifically designed to replace old equipment with new equipment with a useful life of more than five years. For example, the Four Corners capital projects include the following pieces of equipment that have been in use for 35-40 years: (a) High Pressure Turbine Replacement (installed in 1960s); (b) Horizontal Reheat Bank Replacement Unit 5 (installed in 1970); (c) First Stage Pendant Superheater Replacement Unit 5 (installed in 1970); (d) GSU Transformer T634 Replacement Unit 5 (installed in 1968).¹¹ Replacing this equipment with new components of similar useful lives will extend the life of Four Corners, a baseload facility, beyond five years.

In addition, the long-term investment required for the capital projects will result in an increase in the output of the facility over what would occur without the new investment. As noted by SCE, "After the pulverizer upgrades, unit load will only have to be reduced by 25 MW to 50 MW (*i.e.*, an improvement of 50 MW)."¹²

¹⁰ Petition, p. 4, emphasis added.

¹¹ See Petition, Exhibit C, p. 14 *et seq.*

¹² Petition, Exhibit C, p. 33.

While SCE alleges that the EPS Decision failed to consider the circumstances of this type of investment, the EPS Decision included specific language addressing long-term investments in utility-owned and utility-contracted arrangements, particularly where the investment would either (a) prolong the useful life of the facility, as is the case with Four Corners, or (b) increase the output of the facility, as is also the case with Four Corners. Thus, the EPS clearly applies to the type of investment in the Four Corners Units 4 and 5 sought by SCE.

II. APPLICATION OF THE EPS TO FOUR CORNERS WOULD NOT HARM SCE

SCE alleges that the application of the EPS to the Four Corners Generating Station would harm SCE (separate from ratepayers). Specifically, SCE argues (a) that application of the EPS would “impair SCE’s ability to fulfill the financial obligations it had undertaken when it executed various agreements which made SCE a co-owner of units 4 and 5 of Four Corners Generating Station,”¹³ and (b) “SCE would be liable for all the costs it would have been required to fund, in addition to other default related costs and expenses involved in operating Four Corners during the period of SCE’s default.”¹⁴

Regarding the allegation of contract impairment, the Co-Tenancy Agreement specifies what is to occur if a Participant fails to fulfill its financial obligations. Specifically, the Agreement requires a reassignment of rights and obligations among the Participants so as to minimize the potential for disputes and mitigate the potential for contractual failure.¹⁵ The contract terms continue in effect in recognition of the reassignment with SCE’s Participant status and other rights unimpaired.

Regarding the issue of cost liability, the only harm that SCE has identified is its

¹³ Petition, p. 2.

¹⁴ Petition, p. 3.

¹⁵ Petition, Exhibit B, Section 20.5.

liability for the reallocated costs of operating the plant (*e.g.*, O&M, fuel, etc.) plus the cost of replacement generation as provided in the Co-Tenancy Agreement. SCE, however, is not proposing in its Petition that SCE shareholders should bear these costs; rather, the harm, to the extent that it occurs, falls to ratepayers, not SCE.

III. APPLICATION OF THE EPS TO FOUR CORNERS WILL NOT HARM RATEPAYERS

SCE alleges that the application of the EPS to Four Corners would harm ratepayers. Specifically, SCE argues that it would cost SCE's customers \$189 million in incremental replacement energy costs on an annual basis, assuming a 75% capacity factor. In addition, SCE alleges that the replacement Resource Adequacy capacity costs equate to an additional \$29 million.¹⁶

In reality, SCE customers may significantly benefit from the elimination from SCE's portfolio of 720 MW of a resource that does not meet the EPS.

- First, SCE's customers would save the \$178.5 million that SCE proposes to invest in new equipment for Four Corners Units 4 and 5.
- Second, if SCE does not have to bear the costs of mitigating the carbon emissions from Four Corners Units 4 and 5, SCE ratepayers may realize substantial savings. Under the terms of the Co-Tenancy Agreement, if SCE fails to fulfill its financial commitments, then SCE's Participant's share is reassigned. Accordingly, SCE's ratepayers would not have to bear the cost of mitigating the GHG emissions associated with the units. Assuming imposition of an allowance-based, Cap and Trade program imposed on "deliverers" of power into the California grid (as recommended in the Proposed Decision currently before the Commission), SCE's customers would save an estimated \$155 million - \$181 million annually between

¹⁶ Petition, p. 9.

2012 (initiation of the CARB GHG emissions reduction program) and 2016 (expiration of SCE's current Agreements regarding Four Corners) by eliminating the 720 MW of coal-fired production from SCE's generation portfolio. The total savings to ratepayers during the 2012-2016 period equates to over \$841 million, assuming a relatively modest GHG allowance cost of \$36 per tonne (metric ton). See Attachment A for a detailed breakout of assumed costs.

Between the savings from deferring the original investment in capital programs to maintain the Four Corners facility and the savings from not having to purchase GHG allowances to mitigate Four Corners' coal-based output, ratepayers may at worst be neutral and, assuming the higher carbon costs many analysts predict, they could reap significant savings by not reinvesting in Four Corners.

IV. CONCLUSION

SCE seeks to eliminate the application of the EPS to its own coal-based generation and to reverse the Commission's implementation of SB 1368 in spite of the clear language in the EPS Decision that subjects this type of facility to the EPS. SCE argues that the EPS Decision failed to address its stated concerns related to the type of ownership exhibited in the Four Corners case. On the contrary, the Decision was quite clear on its application to these types of facilities. For the Commission to reverse itself on this key issue would create a troubling precedent that will undermine the stability of the GHG emission reduction program at the start of the Commission's implementation of that program.

SCE argues that application of the EPS harms SCE (distinct from ratepayers). However, the Co-Tenancy Agreement specifically addresses how to handle situations in which Participants fail to meet their investment obligations. The Agreement specifies a reassignment of rights and obligations among the Participants so as to minimize the potential for disputes and mitigate the potential for contractual failure. Furthermore, the only harm that SCE has identified

is the liability for the reallocated costs of operation (*e.g.*, O&M, fuel, etc.) plus the cost of replacement generation as provided in the Co-Tenancy Agreement. SCE, however, is not proposing that SCE shareholders bear these costs; rather, the harm, to the extent that it occurs, falls to ratepayers, not SCE.

SCE argues that application of the EPS harms its customers. However, SCE's analysis fails to consider the significant benefits to ratepayers from avoiding the need to purchase GHG allocations to offset the GHG emissions of the coal-fired Four Corners units. Once these benefits are considered, the conclusion is unavoidable that customers are neutral or significantly better off by avoiding the investment in the Four Corners capital program.

For all these reasons, IEP respectfully urges the Commission to deny SCE's Petition and to make none of the modifications SCE requests.

Respectfully submitted this 28th day of February, 2008 at San Francisco, California.

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By /s/ Brian T. Cragg

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ATTACHMENT A

Calculation of Four Corners Allowance Costs

Item		Unit 4	Unit 5
(1)	Megawatts ¹⁷	745	745
(2)	SCE Share ¹⁸	48%	48%
(3)	SCE MWs	357.6	357.6
(4)	Capacity Factor ¹⁹	75%	75%
(5)	Annual Energy (GWH)	2349	2349
(6)	Heat Rate (btu/kWh) ²⁰	9877	9908
(7)	Fuel per Year (mmbtu) ²¹	23,205,340	23,278,172
(8)	Coal CO ₂ (lbs./mmbtu) ²²	205	205
(9)	CO ₂ Emissions (lbs/year) ²³	4,757,094,672	4,772,025,312
(10)	CO ₂ Emissions (tonnes/year) ²⁴	2,157,804	2,164,576

Annual Energy for Units 4 and 5 (GWH): 4,699

Annual CO₂ Emissions for Units 4 and 5 (tonnes): 4,322,380

CO ₂ Allowance Prices for 2012 (€/tonne) ²⁵ :	€24.45
\$/€ (as of 2/21/2008):	1.47
CO ₂ Allowance Prices for 2012 (\$/tonne):	\$35.94

Assuming CO₂ allowance cost escalation of 4% per year, allowance cost for continued operation of Edison's share of Four Corners is shown below.

Four Corners Allowance Cost		
Year	\$/Year	\$/MWH
2012	\$155,352,838	\$33.06
2013	\$161,566,951	\$34.38
2014	\$168,029,629	\$35.76
2015	\$174,750,814	\$37.19
2016	\$181,740,847	\$38.68
Total	\$841,441,079	

¹⁷ <http://www.srpnet.com/about/stations/fourcorners.aspx>

¹⁸ SCE Petition for Modification of D.07-01-039, page 2.

¹⁹ SCE Petition for Modification of D.07-01-039, page 9.

²⁰ EPA NEEDS Database being used by CARB for AB32 analysis

<http://www.epa.gov/airmarkets/progsregs/epa-ipm/#newbc>

²¹ (5) x (6)

²² US EPA Emission Factors, <http://www.epa.gov/cpd/pdf/brochure.pdf>

²³ (7) x (8)

²⁴ (9) ÷ 2204.6

²⁵ European Climate Exchange for trade day February 21, 2008 - http://www.ecxexchange.com/default_flash.asp

CERTIFICATE OF SERVICE

I, Melinda LaJaunie, certify that I have on this 28th day of February 2008 caused a copy of the foregoing

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to be served on all known parties to R.06-04-009 listed on the most recently updated service list available on the California Public Utilities Commission website, via email to those listed with email and via U.S. mail to those without email service. I also caused courtesy copies to be hand-delivered as follows:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed this 28th day of February 2008 at San Francisco, California.

/s/ Melinda LaJaunie
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PUC/X97230.v1